

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE ORDER REQUIRING APPLE, INC.
TO ASSIST IN THE EXECUTION OF A
SEARCH WARRANT ISSUED BY THIS
COURT

Case No. 14-7063 (JCB)

APPLICATION

Filed Under Seal

INTRODUCTION

The United States of America, by and through Carmen M. Ortiz, United States Attorney, and Seth B. Kosto, Assistant United States Attorney, hereby moves this Court under the All Writs Act, 28 U.S.C. § 1651, for an order requiring Apple, Inc. (“Apple”) to assist in the execution of a federal search warrant by bypassing the lock screen of two iOS devices, specifically, two Apple iPhones (“the iPhones”).

FACTS

The Federal Bureau of Investigation currently has in its possession two iPhones that were seized from LOUIS DINUNZIO and JOSEPH KAZONIS pursuant to a search warrant issued by this Court. Initial inspection of the iPhones pursuant to the warrant reveals that they are locked. Because the iPhones are locked, law enforcement agents are not able to examine the data stored on the iPhones devices as commanded and permitted by the search warrant.

The iPhones are iPhone 5s. The first iPhone bears model number A1429, FCC ID number BCG-E2599A, ICID number 579C-E2610A, and IMEI number 990002834730887. The second iPhone bears model number A4128, FCC ID BCC-E2599A, ICID number 579C-E2599A, and IMEI number 013437000168020.

Apple, the creator of the iOS operating system and producer of the iPhones, may have the capability retrieving data stored on the iPhones that is not currently accessible to the FBI because

the iPhones are locked. This Application seeks an order requiring Apple to use any such capability, so as to assist agents in complying with the search warrant.

DISCUSSION

The All Writs Act provides that “[t]he Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.” 28 U.S.C. § 1651(a). As the Supreme Court explained, “[t]he All Writs Act is a residual source of authority to issue writs that are not otherwise covered by statute.” *Pennsylvania Bureau of Correction v. United States Marshals Service*, 474 U.S. 34, 43 (1985). “The power conferred by the Act extends, under appropriate circumstances, to persons who, though not parties to the original action or engaged in wrongdoing, are in a position to frustrate the implementation of a court order or the proper administration of justice... and encompasses even those who have not taken any affirmative action to hinder justice.” *United States v. New York Tel. Co.*, 434 U.S. 159, 174 (1977). Specifically, in *United States v. New York Tel. Co.*, the Supreme Court held that the All Writs Act permitted district courts to order a telephone company to effectuate a search warrant by installing a pen register. Under the reasoning of *New York Tel. Co.*, this Court has the authority to order Apple to use any capabilities it may have to assist in effectuating the search warrant.

The government is aware, and can represent, that in other cases, courts have ordered Apple to assist in effectuating search warrants under the authority of the All Writs Act. Additionally, Apple has complied with such orders.

The requested order would enable agents to comply with this Court's warrant commanding that the iPhones be examined for evidence identified by the warrant. Examining the iPhones without Apple's assistance, if it is possible at all, would require significant resources and may harm the iPhones. Moreover, the order is not likely to place any unreasonable burden on Apple.

Respectfully submitted,

/s/Seth B. Kosto
SETH B. KOSTO
Assistant United States Attorney

February 19, 2014
Boston, Massachusetts